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I. INTRODUCTION

This article focuses on giving lawyers a competitive edge in the evolving economy. It puts forth a framework for a new legal business model. Why should the legal business model be called upon to change? For at least two reasons: One is that clients' needs are evolving toward pluralistic processes providing tailor-made added value solutions.[1] Another reason is that the core legal business model is based on legal risk analysis, which has been proven to have flaws and limitations.[2] A large-scale empirical study conducted by Kiser, Asher, and McShane demonstrated that risk analysis methodology has poor predictability potential.[3] Additionally,

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1. *See generally* Thomas J. Stipanowich & J. Ryan Lamarre, *Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict Management in Fortune 1000 Corporations*, 19 HARV. NEGOT. L. REV. 1 (2014). The authors report that an increasing number of leading corporations have "embraced mediation and foresee its continuing use for a wide spectrum of disputes" and that they are "also employing other informal approaches to early resolution of conflict." *Id.* at 3.

2. *See* Randall L. Kiser et al., *Let's Not Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiations*, 5 J. EMPIRICAL LEGAL STUDS. 551 (2008) [hereinafter *Let's Not Make a Deal*].

3. *Id.* at 563-66. Kiser et al. analysed 2,054 contested litigation cases reported in *Verdict Search California* between 2002 and 2005 in which the plaintiffs and the defendants conducted settlement negotiations. *Id.* at 556. The study concluded that the risk analysis methodology has poor predictability potential. *Id.* at 586. Indeed, in a majority of 85.5% of the cases, attorneys

the risk analysis model leaves aside global value. Thus, the potential to reach desired value for clients is limited under the traditional legal business model. Therefore, lawyers need to adapt to stay competitive in the "trust market."[4]

A need for rethinking legal services has been acknowledged in many jurisdictions and particularly in the Canadian context where the Supreme Court invited a cultural shift,[5] hence legitimising the suggestions made by the Canadian Bar Association in a recent report encouraging a rethinking of legal services.[6] Ongoing reflections challenge both the private sector on creating economic value and the public sector regarding access to justice. On this latter topic, a major step has been taken with Quebec's new Code of Civil Procedure, effective early 2016, suggesting a cultural shift toward dispute prevention and resolution processes.[7]

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committed a "decision error," occurring when "either a plaintiff or a defendant decides to reject and adversary's settlement offer, proceeds to trial, and finds that the result at trial is financially the same as or worse than the rejected settlement offer." *Id.* at 563.

4. *See, e.g.*, *The Promise of the Blockchain: The Trust Machine*, ECONOMIST (Oct. 31, 2015) http://www.economist.com/news/leaders/21677198-technology-behind-bitcoin-could-transform-how-economy-works-trust-machine; Quartz Creative, *The Technology Behind Bitcoin Could Replace Lawyers, Too*, HEWLETT PACKARD ENTERPRISE, https://www.hpematter.com/issue-no-5-summer-2015-idea-economy/technology-behind-bitcoin-could-replace-lawyers-too (last visited Jan. 24, 2016).

5. See *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87 (Can.), wherein the court noted:

> A proper balance requires simplified and proportionate procedures for adjudication, and impacts the role of counsel and judges. This balance must recognize that a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial.

Id. at 27. The court further opined:

> This requires a shift in culture. The principal goal remains the same: a fair process that results in a just adjudication of disputes. A fair and just process must permit a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found. However, that process is illusory unless it is also accessible—proportionate, timely, and affordable. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure.

Id. at 28.

6. CBA Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada*, CANADIAN BAR ASS'N (Aug. 2014), http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf; *The Future of Legal Services in Canada: Trends and Issues*, CANADIAN BAR ASS'N (June 2013), http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/trends-isssues-eng.pdf.

7. The new Code of Civil Procedure provides for private modes for dispute prevention and resolution in Code of Civil Procedure, CQRL, c. C-25, arts. 1-7 (Can.). More specifically, Article 1 provides for a duty to consider dispute prevention and resolution modes, such as negotiation, mediation arbitration and any other appropriate, efficient, and proportionate mechanisms. Moreover, lawyers have a continuous ethical duty to inform and counsel their clients about dispute prevention and resolution modes throughout their mandate, as provided for by Article 42 of the Code of Professional Conduct of Lawyers, RLRQ, c. B-1, r. 3.1.

How to reboot legal core business model? "Design thinking," a thought methodology borrowed from designers to generate breakthrough innovation, has proven value for adaptability in different contexts.[8] A noticeable recent trend occurring in the business world is a business design that follows which design thinking has been successful at driving changes that benefit end-users and allowing companies to thrive by obtaining a competitive advantage.[9] Application to law has been recently developed in technological legal design.[10] Tech legal design aims at building a new generation of legal products and services "at the intersection of human-centered design, technology and law."[11] In this paper, we propose legal design lawyering as a potentially ground-breaking way of viewing and practicing law. We suggest that developing *Legal Design Lawyering* problem-solving competency could bolster competitiveness and innovation in the legal departments to better respond to clients' needs and interests.[12] Legal designers are called upon to redefine winning by a re-evaluation of value and predictability. The following presents *Legal Design Lawyering* dynamics, elements, and learning.

II. LEGAL DESIGN DYNAMICS

Legal design is a problem-solving competency based on design thinking cognitive styles dynamics, involving "knowing," "analysing,"

8. Ulla Johansson-Sköldberg et al., *Design Thinking: Past, Present and Possible Futures*, 22 CREATIVITY & INNOVATION MGMT. 121, 128 (2013), http://designthinkingsydney.com.au/sites/default/files/10.%20Design%20Thinking_%20past,%20present,%20future.pdf (describing design thinking applications in management, for organizational change, in public administrations, hospitals, and even libraries) [hereinafter *Design Thinking*]; Tim Brown, *Design Thinking*, HARV. BUS. REV. 84-92 (June 2008), http://www.ideo.com/images/uploads/thoughts/IDEO_HBR_Design_Thinking.pdf; *see also* TIM BROWN, CHANGE BY DESIGN 3 (Harper Collins 2009) (describing design thinking as a "powerful, effective, and broadly accessible" approach to innovation that can be applied in business and in society to generate breakthrough ideas and have an impact).

9. *Design Thinking*, *supra* note 8, at 28 (explaining that design thinking can help to gain "the next competitive advantage").

10. *See* Margaret Hagen, *Next Gen Legal Services: The Possibility of Legal Design*, LEGAL DESIGN LAB, http://www.legaltechdesign.com/ (last visited Jan. 6, 2016).

11. *Id.*

12. *See generally* JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (Vancouver, UBC Press 2008) (arguing that there is a need for a "new lawyer" with evolved beliefs and new habits of practice and who masters problem-solving skills).

"synthesizing," and "creating" capacities.[13] Legal design dynamics implies that a lawyer will use all four styles to understand clients' past, present, and future situations at both abstract and concrete levels (see Figure 1). *Knowing* refers to the ability to observe the present in concrete terms in order to harvest deep knowledge about a person's life.[14] *Analysing* is the ability to categorize knowledge of the present situation in an abstract structure or system.[15] *Synthesizing* is the abstract capacity to shape new holistic solution options by taking into account complexity of past, present, and likely upcoming situations.[16] *Creating* is the action of crafting tailor-made concrete solutions that can be assessed for their practical usage and then implemented.[17]

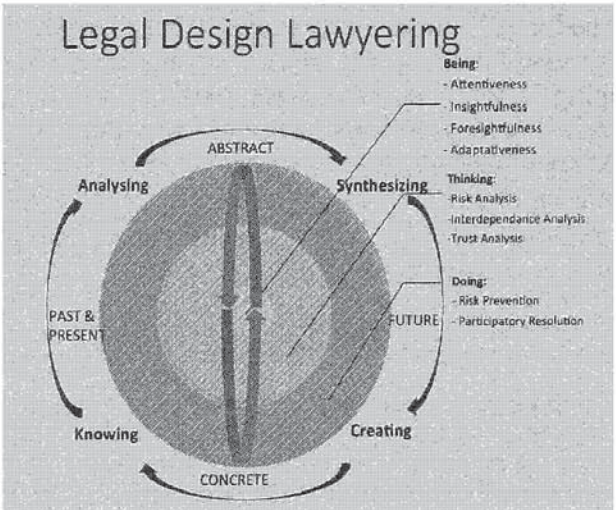

Figure 1

Problem-solving dynamics require the use of: (1) four cognitive styles; (2) retrospective and prospective visions; and (3) double loop learning for lawyers' ways of being, thinking, and doing.

A lawyer practicing legal design will use all four cognitive capacities within a client-centered approach. He will support his client in making sense of his past and present realities as well as anticipated situations in the future. Looking at the problem with a 360-degree retrospective and prospective vision is a state of mind that has sometimes been labeled as

13. CHRISTIAN BASON, LEADING PUBLIC SECTOR INNOVATION: CO-CREATING FOR A BETTER SOCIETY 140-42 (Policy Press 2010).

14. *Id.* at 140.

15. *Id.*

16. *Id.*

17. *Id.*

bilateral thinking or integrative thinking.[18] This state of mind refers to facing constructively the tension between divergent ideas to create new convergent ideas superior to each individual idea.[19] Integrative problem-solving in the legal context has sometimes been described as a decision-making process where parties are proactive, respectful, and creative in the pursuit of mutually fair investment that provides them with a sense of justice.[20]

Lawyers hoping to become legal designers will need to adopt a particular mindset, re-evaluating their thinking as well as their working methods. *Mindset* refers to ways of being.[21] This corresponds to core attitudes of being *attentive* to the concrete present situation of clients, being *insightful* in the understanding of clients' situations, being *foresightful* to see what will or might happen in the clients' future, and being *adaptive* in order to fit the right processes to the clients' situations and craft the appropriate solution.[22] *Thinking* refers to ways of reasoning.[23] Lawyers are typically well appreciated by clients for their legal risk analysis capacities. An assessment of the balance of power will define the cost-benefit value of pursuing to trial or settling out of court. Legal designers will add two reasoning abilities to their repertoire: Interdependence analysis will be performed by a lawyer interested in the value of collaboration between his client and the opposing party. He will evaluate the value that can be generated by parties if they engage in reciprocity behaviours and mutual investments. Trust analysis will also be a reasoning capacity developed by legal designers in order to predict the likelihood of reaching the expected individual self-interest value or mutual cooperative value.[24] Legal design also implies a re-evaluation of methods or "ways of doing." As an addition to traditional dispute resolution mechanisms, innovative risk prevention methods will be offered to clients and new participatory problem-solving

18. *See* Heather Fraser, *Business Design: Becoming a Bilateral Thinker*, ROTMAN MAGAZINE 71, 73 (Winter 2011), https://www.ideo.com/images/uploads/news/pdfs/BusinessDesign.pdf. *See also* ROGER MARTIN, THE OPPOSABLE MIND: HOW SUCCESSFUL LEADERS WIN THROUGH INTEGRATIVE THINKING (Harvard Bus. Press 2007).

19. *See* Fraser, *supra* note 18.

20. *See* JEAN-FRANÇOIS ROBERGE, LA JUSTICE PARTICIPATIVE: CHANGER LE MILIEU JURIDIQUE PAR UNE CULTURE INTÉGRATIVE DE RÈGLEMENT DES DIFFÉRENDS 88 (2011).

21. Fraser, *supra* note 18, at 71.

22. *Id.* at 71-73.

23. *Id.*

24. *See generally* Roy J., Lewicki et al., *Trust and Distrust: New Relationships and Realities*, 23 ACAD. MGMT. REV. 438 (1998).

tools will emerge. To that effect, dispute system design is an essential skill for legal designers.[25]

III. LEGAL DESIGN ELEMENTS

A. Mindset: Ways of Being

Mindset refers to design-readiness.[26] The legal designer's mindset is based on four soft skills (or ways of being), which equip the attorney to provide tailor-made solutions for his client: attentiveness, insightfulness, foresightfulness, and adaptiveness.[27]

An **attentive** mindset is a key feature of legal design. This includes being "observant" to or "paying careful attention" to his client's realities.[28] An attentive attorney will be conscientious and concerned about the needs and wishes of his client.[29] Being attentive means being aware that each client is unique, has different priorities, and that these priorities evolve over time as a result of various situations.

The mindset of legal design requires being **insightful** of a client's situation. An insightful attorney will have and show "an accurate and deep understanding" of his client's needs.[30] These insights will allow an attorney to have a global understanding of how each of the client's needs intersect with each other and what is in his client's best interest. Having an insightful understanding requires some degree of intuition and perception.[31] The attorney should avoid generalisation and simplification of his client's interests based on past observations or situations.[32]

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25. *See* Stephanie Smith & Janet Martinez, *An Analytical Framework for Dispute Systems Design*, 14 HARV. NEGOT. L. REV. 123, 125 (2009).

26. Fraser, *supra* note 18, at 71.

27. *See id.* at 71-76.

28. *Definition of Attentive*, OXFORDDICTIONARY.COM, http://www.oxforddictionaries.com/definition/english/attentive (last visited Nov. 30, 2015). *See also* Fraser, *supra* note 18, at 72 (referring to "mindfulness" and "empathy" as essential qualities for "design-readiness" in the context of business design).

29. *See Definition of Attentive*, *supra* note 28.

30. *Insightful definition*, OXFORDDICTIONARY.COM, http://www.oxforddictionaries.com/definition/english/insightful (last visited Nov. 30, 2015).

31. *See* Kupfer Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143, 163-64 (2002) (the result of the study associated the aptitude being "perceptive" with a "problem-solving negotiator" as contrasted with an adversarial negotiator).

32. RANDALL KISER, BEYOND RIGHT AND WRONG: THE POWER OF EFFECTIVE DECISION MAKING FOR ATTORNEYS AND CLIENTS 325 (Springer 2010).

Legal designers should also possess a **foresightful** mindset. It consists in the "ability to see what will or might happen in the future."[33] Attorneys need to have a view forward of their clients' situations. They need to be able to "anticipate and visualize new scenarios" in order to "improv[e] a new situation into a more preferred one."[34] They should avoid "rushing to define the problems" and instead "employ divergent thinking" to produce "a multitude of options, generate different and opposite ideas[,] and formulate unlikely and original answers."[35] Having a capacity to hold a divergent perspective will provide attorneys "with a broader set of assumptions and sensitivity to a greater variety of inputs."[36] Being foresightful makes attorneys better problem solvers. Legal designers are able to find "opportunities in places where other people have given up."[37]

Finally, legal designers should be **adaptive**. They should have a "capacity for or tendency toward adaptation."[38] An adaptive mindset makes legal designers open to experimentations and explorations. They are not afraid to find creative ways and suggest entirely new processes for their client's specific situation. The mantra of legal designers is "failing fast through early tryouts."[39] It allows exploration and experimentation with reasonable levels of risk.[40] As illustrated in Figure 1, "attentiveness" and "adaptiveness" are two skills necessary for the attorney to know and adapt to the concrete reality of its client. *Insightfulness* and *foresightfulness* are used in the abstract level as the attorney needs to comprehend, to a deeper cognitive level, the realities experienced by his client and be able to project what will happen in the future. *Attentiveness* and *insightfulness* are oriented on the client's past experiences, whereas *foresightfulness* and *adaptiveness* are projected on its future.

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33. *Definition of Foresightful*, MERRIAM-WEBSTER.COM, http://beta.merriam-webster.com/dictionary/foresight (last visited Nov. 30, 2015). *See* Fraser, *supra* note 18, at 71-72 (arguing that, in the context of business design, "openness" is necessary for design-readiness; it implies being open to "new ways of doing things," having an "active imagination," "intellectual curiosity," and generally "considering novel ideas and unconventional values.").

34. Lotta Hassi & Miko Laakso, *Making Sense of Design Thinking, in* 1 IDBM 50, 58 (2011), http://idbm.aalto.fi/pdf/IDBM_papers_vol1.pdf.

35. KISER, *supra* note 32, at 325.

36. KARL E. WEICK & KATHLEEN M. SUTCLIFFE, MANAGING THE UNEXPECTED 162 (2001).

37. Hassi & Laakso, *supra* note 34, at 58.

38. *Definition of Adaptive*, MERRIAM-WEBSTER.COM, http://beta.merriam-webster.com/dictionary/adaptive (last visited Nov. 30, 2015); *see* Schneider, *supra* note 31, at 163-64 (associating being adaptable with the characteristics of a problem-solving negotiator).

39. Hassi & Laakso, *supra* note 34, at 58.

40. *Id.*

B. *Thinking: Ways of Reasoning*

Thinking refers to intellectual agility in problem-solving.[41] The legal designer's thinking corresponds to three types of reasoning: risk analysis, interdependence analysis, and trust analysis. Legal design thinking leads to two judgment assessments: one is descriptive of the value of a case according to every party involved and another one is predictive of the likelihood of achieving the assessed value.

Risk analysis expertise is the traditional core business model of many law firms and in-house legal departments.[42] Value is usually defined as the maximal individual benefits one party can gain at the expense of the others compared to the likely costs to achieve it. Assessment of value for one's client is made on the premise of a distributive zero-sum interdependency situation.[43] One's gain is achieved at the expense of the other's loss.[44] Balancing the power to one's advantage is the strategy to leverage maximum of resources for one's own pocket.

Risk analysis expertise uses a predictability reasoning that focuses on legal precedents and external motivational factors.[45] Lawyers are trained to apply past applications of the law to facts and use legal precedent to predict the likelihood of future gain or loss. In addition, attorneys will value external incentives as strong predictor of behavior, most notably constraints and uncertainty resulting from the traditional judicial path of justice. Rewards, sanctions, and dependence costs, often thought of in economic terms, are believed to directly motivate the other's behaviors and the course of actions taken in judicial procedure. Considering the self-interest motivational assumption of risk analysis, a cost-benefit ratio analysis is considered a reliable way of thinking to counsel a client on the appropriate and efficient resolution process. In summary, risk analysis is an instrumental problem-solving thinking process; the attorney aims to maximise value for his client, using his leverage power even at the expense of others.

However useful the risk analysis model may be, its limitations have been demonstrated by empirical research.[46] Therefore, the legal designer will need to develop an expertise in two additional ways of reasoning:

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41. *See* Fraser, *supra* note 18, at 74.

42. *Let's Not Make a Deal*, *supra* note 2.

43. *See* Fredrike P. Bannink, *Mediation and Game Theory* (June 2012), http://www.mediate.com/mobile/article.cfm?id=9213.

44. *Let's Not Make a Deal*, *supra* note 2, at 576.

45. *See* Lewicki et al., *supra* note 24.

46. *See id.*; KISER ET AL., *supra* note 32, at 392-94; Jane Goodman-Delahunty et al., *Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes*, 16(2) PSYCHOL. PUB. POL'Y & L. 133, 137 (2010).

interdependence analysis to broaden the notion of value, and trust analysis to better assess predictability of reaching such expanded global value.

Interdependence analysis is oriented toward the potential of collaboration between two or more disputing parties. It leads to a descriptive judgment on the global value involved in a case. In addition to evaluating individual value for one's client, like an attorney does when performing risk analysis, why would he not also assess the mutual gain resulting from a potential joint venture between both his client and counterpart? Mutual value is considered added value to individually achievable value. It could take many forms such as money, time resources, services exchange, positive references, positive self-esteem, identity, and emotional well-being from being accepted in a group, etc. Performing an interdependence analysis is asking: what is the potential value created by maintaining or even improving the relationship between parties in the future? Cooperating requires an exchange of equivalent value between parties. For cooperation, equivalent reciprocity behavior is the key.

Mutual value is defined as what one party could benefit from the other party without it being at either party's expense. Two reasons why this could occur: (1) added-value could sometimes exist if parties work together (such as corporate mergers), or (2) priority value gain is obtained at the expense of lower value loss and vice versa (such as commercial transactions). An interdependence analysis looks for an underlying value of cooperation that could be added value or compensated value.[47] In summary, interdependence analysis is an integrative problem-solving thinking process where mutual interests are explored to create mutual value and individual interests are prioritized and exchanged to create compensated value. In other words, the legal designer will aim to maximise value for his client with the use of reciprocity strategies between the parties.

Trust analysis leads to a predictive judgment on the consistency and trustworthiness of the other party's behavior.[48] This way of reasoning is based on reciprocal similarity in terms of mutual identification with the other party and mutual gratitude.[49] Trust analysis brings an "identity-based trust" (IBT) judgment to support prediction of the likely course of action involving

47. *See generally* Caryl E. Eusbult & Bram P. Buunk, *Commitment Processes in Close Relationships: An Interdependence Analysis*, J. SOC. & PERSONAL RELATIONSHIPS (1993), http://faculty.wcas.northwestern.edu/eli-finkel/documents/39_RusbultBuunk1993JournalOfSocialAndPersonalRelationships.pdf (discussing interdependence analysis in the context of personal social relationships).

48. *See* Lewicki et al., *supra,* note 24.

49. *See id.*

others.[50] In other words, the more a person thinks or acts like oneself, the more one can predict the other's behavior. Perceived compatibility of values, moral beliefs, definition of self, and positive emotional attachment are keys to forging a mutual understanding and predicting consistency in behavior.[51]

Trust analysis is therefore based on social factors, whereas risk analysis is based on instrumental factors such as legal precedents and external motivational factors (i.e. rewards, sanctions, dependencies) to predict a counterpart's behavior.[52] Risk analysis measures "calculus-based trust" (CBT) between parties, which is useful but has limited predictive reliability by itself.[53] Legal designers have the intellectual agility to use two types of reasoning and therefore benefit from two predictors of trust instead of only one: calculus-based and identity-based.[54] Due to this factor, one can assume that the legal designer's predictive judgements are likely to be more reliable.

In previous works we developed a Trust-Relationship Model (TRUE) and identified categories according to this trust taxonomy: friendly partners (high IBT, low CBT), working partners (high CBT, low IBT), and trustworthy partners (high IBT and high CBT).[55] Global value assessed by an interdependent analysis will be more easily achievable by trustworthy partners who share instrumental goals and perceive shared identification. In summary, trust analysis is a social connection problem-solving thinking process in which similarities and commonalities are explored to create mutual trust and improve predictability of others' behaviors. In other words, the legal designer will aim to maximise trust between his client and the other party in order to improve the likelihood of achieving the global value at stake.

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50. *See id.*; *see generally* Roy J. Lewicki & Carolyn Wiethoff, *Trust, Trust Development, and Trust Repair*, *in* THE HANDBOOK OF CONFLICT RESOLUTION (Morton Deutsch & Peter T. Coleman eds., 2000) (regarding the concept of "identity-based trust," and "calculus-based trust").

51. *See generally* TOM R. TYLER, WHY PEOPLE COOPERATE? THE ROLE OF SOCIAL MOTIVATIONS (Princeton Univ. Press 2011).

52. *See* Lewicki et al., *supra* note 24.

53. *See Trust in Relationships*, DIAMOND MGMT. CONSULTING, http://cms.nortia.org/Org/Org134/Groups/Resource%20Centre/Diamond%20Resources/comp10_TrustInRelationships.pdf (last visited Feb. 15, 2016).

54. *See id.*

55. *See* Jean-François Roberge & Roy J. Lewicki, *Should We Trust Grand Bazaar Carpet Sellers (and Vice Versa)?*, *in* VENTURING BEYOND THE CLASSROOM: RETHINKING NEGOTIATION TEACHING INNOVATIONS FOR CONTEXT AND CULTURE 421 (Christopher Honeyman et al., eds., 2010).

C. Methods: Ways of Doing

Methods refer to problem-solving skills.[56] There is no pre-set process for "doing," but rather the legal designer masters a repertoire of skills and tools to address his client's needs and adapt to them over time.[57] The legal designer requires tactical agility[58] in order to perform risk prevention and participatory dispute resolution.

Risk prevention includes the ability to anticipate and identify areas of potential conflicts. The legal designer should focus on how to transform problems into opportunities for added-value solutions. One way to do so is to establish a preventive contingent agreement with business associates, collaborators, and even competitors. This contractual consensus creates a "prevention partnership," providing guidelines for parties to follow in order to prevent the escalation of emerging problems.

To establish a partnership, legal designers will need to master the ability to build trust among parties and foster collaboration.[59] Trust can be instilled by different situational factors, such as security, similarities, interests, capability, predictability, and communication.[60] To increase a sense of security, the legal designer could make use of contracts so that his counterpart feels that the commitments will be upheld. To amplify the feeling that the parties share similarities and interests, the legal designer could change speech "from the 'I' habit to the 'we' paradigm" and focus on common goals.[61] People place trust in competent individuals and organizations. To show his capability, the legal designer will need to maintain high professional standards and acknowledge performance deficiencies.[62] The legal designer will also need to act with integrity and predictability to maintain trust. For that, he must avoid being overly confident about what he promises to deliver. He could also benefit from explicitly stating his values so that his counterparts can evaluate consistency between the legal designers' values and behaviors.[63] Finally, trust will

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56. MACFARLANE, *supra* note 12.
57. *Id.*
58. *See* Fraser, *supra* note 18, at 72.
59. KISER, *supra* note 32, at 392-94.
60. Robert F. Hurley, *The Decision to Trust*, HARV. BUS. REV. 55, 62 (2006) (finding the result of a study associated the aptitude being "perceptive" with a "problem-solving negotiator" as contrasted with an adversarial negotiator).
61. KISER, *supra* note 32, at 393.
62. *Id.* at 394.
63. *Id.*

depend on the maintenance of strong communication channels within all the parties involved where they can speak openly and sincerely.[64]

To foster collaboration, the legal designer will need to master eight principles of collaboration, openness, and reciprocity: (1) increase the importance of the future relationship; (2) reward cooperative gain; (3) encourage reciprocity; (4) begin negotiations with a gesture of openness; (5) continue with a reciprocity gesture; (6) forgive the other if he does not make a cooperative gesture; (7) stay clear and constant; and (8) risk cooperation to preserve relations.[65]

Participatory Dispute Resolution refers to a continuum of modes of dispute resolution that the legal designer can use to support the creation of a tailor-made solution. These include most notably negotiation, mediation, neutral evaluation, and arbitration. Trial is a possibility that has to be evaluated as an alternative to which other dispute resolution processes can be compared to. The legal designer will need tactical agility to choose the most appropriate and efficient mechanism, which may even be a combination of many processes or a sequential use of various modes. For instance, the parties could decide to resolve their dispute by means of mediation, but refer a technical question of contract interpretation to an arbitrator or a third party neutral.

In order to be successful at dispute resolution and obtain global value for his client, the legal designer will need to master integrative bargaining. To practice integrative bargaining, the legal designer is supported by a six principle toolkit: (1) look for common interests; (2) look for preferences and differences; (3) reduce costs and compliance problems; (4) evaluate risks; (5) rank positions and interests; and (6) establish partnership, which includes the necessity to agree on a new objective and to excel in brainstorming abilities.[66]

In summary, legal design *doing* combines *being* and *thinking* through a rigorous thought methodology and acquired skills. It thrives on tactical agility (doing): the potential to achieve global value for the client through acute problem-solving abilities.

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64. *Id.*

65. ROBERGE, *supra* note 20, at 94-109 (based on seminal work of Robert Axelrod). *See* ROBERT AXELROD, THE EVOLUTION OF COOPERATION, (Basic Books, rev. ed. 2006); *see* TYLER, *supra* note 51.

66. Roberge & Lewicki, *supra* note 55, at 328-32, based on works of Peter J. Carnevale, *Creativity in the outcomes of Conflict*, *in* HANDBOOK OF CONFLICT RESOLUTION 414 (Morton Deutsch et al., eds., 2d ed. 2006).

IV. LEGAL DESIGN LEARNING

Legal design redefines the traditional legal business model. This cultural shift in the legal profession can only take place if attorneys follow a "double loop" learning process.[67] Attorneys have mental maps with regard to how to act in situations.[68] It drives the way they plan, implement, and review their actions, typically without conscious knowledge of underlying mental maps.[69] Detection and correction of errors can be performed with a single loop learning process towards a more effective strategy, or with an additional second loop questioning underlying norms, policies, objectives, etc. Taking into account that research demonstrated that attorneys' risk analysis traditional expertise is limited to reaching global value for clients and predicting the likelihood of a satisfying result,[70] shifting from a single to a double loop problem-solving competency might become a new competitive advantage for attorneys in the evolving trust business environment.

Problem-solving with a single loop implies changing strategies (what one does) when proven inefficient (what one obtains), whereas problem-solving with a double loop implies a re-evaluation of deepened mental maps (why one does what he does). The second loop reaches the mental maps that comprise goals, values, beliefs, conceptual frameworks, etc. A double loop learning consists of a re-evaluation of one's inner governing variables as well as those of the people one interacts with. Legal design implies a reassessment of ways of *being*, *thinking*, and *doing* problem-solving to the benefit of clients. Figure 1 best illustrates the double loop learning process by the circular arrows in the center, which covers all elements of legal design.

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67. CHRIS ARGYRIS & DONALD SCHÖN, THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS (1974) (which developed the double loop learning concept) [hereinafter INCREASING PROFESSIONAL EFFECTIVENESS]; *see* CHRIS ARGYRIS & DONALD SCHÖN, ORGANIZATIONAL LEARNING: A THEORY OF ACTION PERSPECTIVE (Addison Wesley 1978); CHRIS ARGYRIS & DONALD SCHÖN, ORGANIZATIONAL LEARNING II: THEORY, METHOD AND PRACTICE (FT Press 1995).

68. *See* INCREASING PROFESSIONAL EFFECTIVENESS, *supra* note 67.

69. *Id.* This assumption is based on Chris Argyris and Donald Schön's works on Theories of Action. They argue there is a split between theory and action as people unconsciously apply *theory in use* based on their mental maps while they think they consciously apply *espoused theory*. Hence, sustainable learning and changes have to take into consideration mental maps. Effectiveness results from developing congruence between theory in use and espoused theory.

70. *See Let's Not Make a Deal*, *supra* note 2; KISER, *supra* note 32, at 392-94.

V. CONCLUSION

A shift towards a new business model for the legal profession is now called for in order to face the combined forces of globalization, technology, and market liberalisation worldwide. Leading academics and practitioners in the field believe the key to establishing a viable competitive legal business model lies in innovation. Following this trend, this article puts forth a new legal problem-solving model based on principles of design thinking that made its mark for innovativeness in diverse professional contexts.

Legal Design Lawyering is a potentially ground-breaking way of practicing law. It is a problem-solving competency based on design thinking dynamics involving various cognitive styles, assessment of concrete and abstract realities, and embracing visions of the past, present, and future potential. At the heart of this evolution of lawyering practices a reassessment of ways of being (mindset), reasoning (thinking), and doing (methods) problem-solving to the benefit of clients can be found. *Legal designers* redefine winning by a re-evaluation of value and predictability. Interdependence value and identity-based trust are now taken into account in addition to traditional instrumental estimates. This paper was written with the objective of being a launching pad to what we believe is an original legal practice framework. We acknowledge that fine-tuning may be necessary. Questions regarding the past, present, and future of Legal Design Lawyering practices and training are called for and this new concept will need to be further developed by the active cooperation of practitioners and academics alike.